ARTICLE APPEARED ON PAGE A-31

NEW YORK TIMES
5 MAY 1983

ABROAD AT HOME

The Secrecy Muddle

By Anthony Lewis

BOSTON, May 4 — On March 11, President Reagan signed a National Security Decision Directive to tighten secrecy in Government. The order has come under growing criticism in Congress and the press. Now it has problems in the Government itself.

Officials trying to carry out the order are running into legal and practical obstacles: ones that should have been considered before Mr. Reagan signed. It is increasingly clear that those who promoted the idea, in their zeal to enforce official secrecy, slipped their draft through without adequate consideration. They did not understand the consequences themselves — and they sold the President a pig in a poke.

Lie detectors are one subject of the Reagan directive. It orders all departments with classified information to instruct employees that they may be required to take so-called lie detector tests when leaks are being investigated. "As a minimum," the directive says, regulations must allow departments to decide that "adverse consequences will follow an employee's refusal to cooperate with a polygraph examination."

But there is a little legal problem with that provision. The review board that sits in judgment on the disciplining of Federal employees, the Merit Systems Protection Board, has decided that employees cannot be punished for refusing to take a lie detector test.

In a case decided Sept. 26, 1980, the board noted that courts have consistently refused to admit as evidence the refusal of someone to take such a test. "Accordingly," it said, "this Board will not permit any adverse inference to be drawn from an individual's refusal to submit to a polygraph examination."

The Reagan order was drafted by a group of middle-level officials headed by Richard K. Willard, a Deputy Assistant Attorney General. Its lengthy report did not discuss that decision of the Merit Systems Board.

An overwhelming practical problem was foreseen by critics of Mr. Reagan's order as soon as it was issued. How would the Government have enough censors to review all the manuscripts that former officials seemingly would have to submit if they wanted to write on a subject related to national security? Now it turns out that some agencies, including the State and Defense Departments, want to read the order narrowly to avoid that very problem.

The Reagan directive says that any official with access to secret intelligence material called Sensitive Compartmented Information must sign an agreement of the kind that has been used by the C.I.A. It would require the official, even after he leaves the Government, to submit manuscripts to censors "for prepublication review to assure deletion of S.C.I. and other classified information."

Mr. Willard, the man who really pushed the secrecy order through, said that passage was designed to put official "consumers" of intelligence on the same basis as "producers." He cited the sweeping 1980 Supreme Court decision in the case of Frank Snepp, a former C.I.A. "producer." The Court penalized Mr. Snepp for failing to submit a book manuscript to the agency although there was no claim that it in fact contained classified information.

There are about 100,000 people in Government today with access to S.C.I. So it would be an enormous burden, over the years, if every such former official had to submit newspaper articles or speeches or books that conceivably contain S.C.I. or "other classified information."

Belatedly facing that problem, some officials now are suggesting that the rule be read to require submission only of manuscripts that the ex-official himself thinks could disclose S.C.I. or intelligence sources and methods. That could drastically reduce the practical problem — and the crippling impact on the tradition of former high officials expressing themselves on current issues.

The effort to carry out the Reagan directive by writing standard forms for Government employees to sign is centered in the General Services Administration's Information Security Oversight Office. Its director, Steven Garfinkel, said in a telephone interview that the directive could be read "in a couple of ways," and "we're trying to decide how to interpret it."

"You have to evaluate the impact to see that it's practical," he said. "You're trying to prevent disclosure of really sensitive information but not create a tremendous workload that is probably not called for. I don't think it was intended to make people submit everything. They have to make a judgment."

So here is a Presidential order less than two months old and already so awkward that officials are trying to "decide how to interpret it" in a non-damaging way. That happened because Richard Willard and his colleagues, none of them top officials, ran their clever scheme through without adequate staffing, without showing a need for such drastic change, without real discussion of legal authority: in short, without an open and legitimate process of decision. What an argument for secrecy!